

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PRE-APPEAL BRIEF

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the Pre-Appeal Brief Conference Pilot Program, the Applicants submit this Pre-Appeal Brief accompanying the Pre-Appeal Brief Request for Review. Please consider the following.

I. Status of the Claims

Claims 1-24 are pending in this application. *See Applicants' Response dated February 7, 2008, pp. 8-12.* Claims 1-24 stand rejected under 35 U.S.C. § 102. *See Advisory Action dated May 14, 2008, p. 1.*

II. Issues on Appeal

The issue on appeal is whether claims 1-24 are anticipated by Ruf (U.S. 6,665,865).

III. Argument

The Applicants respectfully submit that Ruf does not anticipate claims 1-24.

A. Independent Claim 1

The Applicants respectfully submit that independent claim 1 is allowable over the art of record. Claim 1 is directed to a method that involves, *inter alia*, determining an age of an equivalence class. The Applicants maintain their position that Ruf does not describe or suggest determining an age of an equivalence class. *See Applicants' Response dated September 24, 2007, pp. 11 and 12 and Applicants' Response dated February 7, 2008, pp. 13-15.*

Although no language regarding age is described by Ruf, the Advisory Action concludes that “the oldest procedure (method/class) associated with the thread allocation site is a determination of age.” *See Id.* However, this is not described or suggested by Ruf. On the contrary, Ruf does not describe ages of procedures or whether procedures are old. Instead, Ruf describes that a method marked with more than one number can be executed by multiple threads. *See Ruf, 7:13-17.* Ruf does not describe that the quantity of threads that can execute a method is determinative of age. Instead, Ruf describes performing a thread closure analysis to determine which methods can be invoked by which threads. *See Id., 6:21-25.* In Ruf, each thread allocation site is identified by a number. *See Id., 7:13 and 14.* A procedure can be marked with multiple numbers of multiple thread allocation sites if it can be executed by multiple threads from those thread allocation sites. *See Id., 7:15-17.* However, Ruf does not describe or suggest that thread allocation site numbers are indicative of age nor that the quantity of thread allocation site numbers used to mark a particular method is indicative of age. *See Applicants' Response dated September 24, 2007, pp. 11 and 12 and Applicants' Response dated February 7, 2008, pp. 13-15.*

In view of the foregoing, the Applicants respectfully submit that Ruf does not describe determining an age of an equivalence class and, thus, does not describe each and

every element of claim 1. Accordingly, the Applicants respectfully request withdrawal of the § 102 rejection from claim 1 and respectfully submit that independent claim 1 and all claims dependent thereon are in condition for allowance.

B. Independent Claims 9 and 17

The Applicants respectfully submit that independent claims 9 and 17 are also allowable over the art of record for at least the reason discussed above in connection with claim 1. In particular, independent claim 9 is directed to a system having, *inter alia*, a processor coupled to a memory and configured to determine an age of an equivalence class. For at least the reasons discussed above in connection with claim 1, Ruf does not describe or suggest a processor coupled to a memory and configured to determine an age of an equivalence class. Independent claim 17 is directed to a machine accessible medium having instructions stored thereon that, when executed, cause a machine to, *inter alia*, determine an age of an equivalence class. For at least the reasons discussed above in connection with claim 1, Ruf does not describe or suggest instructions that, when executed, cause a machine to determine an age of an equivalence class. Accordingly, the Applicants respectfully request withdrawal of the § 102 rejections from claims 9 and 17 and respectfully submit that independent claims 9 and 17 and all claims dependent thereon are in condition for allowance.

C. Conclusion

In view of the foregoing, the Applicants respectfully submit that claims 1-24 have been improperly rejected. Accordingly, the Applicants respectfully request withdrawal of the rejections under 35 U.S.C. § 102 and respectfully submit that independent claims 1, 9, and 17 and all claims dependent thereon are in condition for allowance. Reconsideration of this application is respectfully requested.

Respectfully submitted,

Dated: **June 6, 2008**

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